
Bureau of Land Management Releases Draft Regulations Governing Hydraulic Fracturing on Federal Lands

2012-05-04

Summary

The Bureau of Land Management (BLM) has released its much anticipated draft regulations addressing subsequent well operations, including hydraulic fracturing. The proposal is sweeping given the early stages of the ongoing federal studies examining environmental issues associated with hydraulic fracturing, and would require well operators to obtain approval before fracturing begins; create new monitoring, reporting and record keeping requirements; impose management standards for some liquids; and mandate written certifications that the well stimulation operation complies with all applicable laws and regulations and that wellbore integrity was maintained throughout the operation.

Proposed Regulations

BLM's proposal claims to take into account advancements made in well stimulation techniques. Hydraulic fracturing, in particular, has become the focus of increased public and media attention, focusing on the question of whether the practice has any influence on water quantity and quality.

The proposed regulations would delete references to hydraulic fracturing in the existing regulations, create an entirely new section to govern well stimulation operations, and add or materially amend six technical terms. In a subtle shift that could substantially increase the scope of the waters covered by the draft, BLM has proposed deleting its long-standing definition of "fresh waters," and substituting the definition of "usable waters" to define the scope of the resources covered by the proposal. BLM says that change reflects an effort to be more protective of the country's water resources, and to align the regulations with its onshore orders.

While BLM suggests the changes in its proposal are not intended to delay the drilling process, and are designed to complement existing state regulations, the extent of new information and approvals required will make delays all but inevitable. While suggesting without specifying that a higher benefit calculation might be supportable, BLM acknowledges the likely cost of the proposed regulation to industry and BLM to be in the range of \$37-44 million per year, while it estimates the anticipated benefits to be in the range of \$12-50 million.

Approval Process

The proposed rule would require well operators to submit a well stimulation plan for approval at least 30 days before commencing those operations. The well stimulation plan must include information regarding the (1) geological formation; (2) depth of perforations or the open-hole interval; (3) well stimulation design; (4) estimated volume of fluids to be recovered; (5) proposed methods of handling, managing and disposing of recovered fluids; and, of possibly great significance, (6) any other information requested by BLM before approving the plan.

Operators also would be required to (1) submit a surface use plan if additional surface disturbances are expected; (2) submit a Cement Bond Log (or an approved alternative); (3) certify, in writing, that the proposed treatment fluid complies with all applicable rules and regulations; and (4) perform a mechanical integrity test of the well's casing.

Additional Requirements

During the well stimulation, operators would be required to (1) monitor and record the annulus pressure; and (2) notify the agency if the annulus pressure increases by more than 500 pounds per square inch gauge as compared to the pressure prior to stimulation.

Operators would be required to store recovered fluids in tanks or lined pits, and implement any additional measures imposed by BLM to ensure that the surrounding environment is protected.

Post-Well Stimulation

Within 30 days of completing stimulation operations, operators would be required to submit a Subsequent Report Sundry Notice. That Notice would include information similar to that required in the approval process, plus information about the chemicals used to stimulate the well, and a certification that the operator maintained wellbore integrity throughout the operation.

Chemical Disclosure

The federal government continues to face increasing pressure from environmental groups and the public to require companies to disclose the type and quantity of chemicals used to hydraulically fracture wells. The proposed regulations would require the well operator to submit, as part of the post-well stimulation report, information identifying the stimulation fluid by additive trade name and purpose, the Chemical Abstracts Services Registry Number, and the percent mass of each ingredient used. BLM suggests the approach is intended to mirror that adopted by Colorado in 2011. BLM indicates it will work to integrate the information into FracFocus, a public disclosure tool developed collaboratively by the Ground Water Protection Council and adopted by leading elements of the natural gas industry.

Confidential Business Information

The proposed regulations protect Confidential Business Information (CBI) from public disclosure. CBI claims must be made when the CBI is submitted. In addition, well operators would be required to identify the law or regulation that protects the information, explain why the information is exempt

from disclosure, and inform BLM whether the information is publicly available through other means. BLM has proposed to include all information in the public record, if it determines that the CBI claims are not substantiated. BLM also proposes to release information, the disclosure of which it determines is not prohibited by federal law, after providing the operator with at least 10 business days' notice of that determination.

Definitions

The proposed regulations add definitions for annulus, bradenhead, proppant, stimulation fluid, and well stimulation. Well stimulation would include such activities as hydraulic fracturing and acidizing. In what is likely to remain a controversial suggestion, BLM has proposed to amend the definition for usable water, and delete the definition for fresh water. "Usable water" is currently defined as "water containing 5,000 ppm or less of dissolved solids," but would be redefined to mean "water containing up to 10,000 ppm of total dissolved solids." That change could substantially increase the scope of waters covered by BLM's proposal.

Conclusion

While BLM claims it does not expect this new approval process to delay operations, the effect of these regulations is likely to include both delay and an increase in the operational and compliance costs associated with drilling on federal and tribal lands.

Well owners and operators, and service company contractors, would be well advised to carefully monitor, and participate in, this rulemaking. This is among the first significant federal rulemakings related to hydraulic fracturing. BLM will accept public comments on the proposed rules for 60 days following publication in the Federal Register. BLM expects to publish the proposed regulation in the Federal Register during the week of May 7.

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